

# NEW HAMPSHIRE STATE BUILDING CODE REVIEW BOARD

## *Minutes of Continued Public Hearing June 29, 2007*

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### **Attendance:**

Senator Robert Clegg, Chairman, designee for Dept of Safety  
Jerry Tepe, Board of Architects, licensed architect  
Wayne A. Richardson, NH Building Officials Association, municipal building official  
Jon Osgood, Public Utilities Commission, state energy conservation code office  
Thomas Lambert, Chief, NH Association of Fire Chiefs, Municipal Fire  
James Petersen, PE, Board of Engineers, licensed mechanical engineer  
Mark Weissflog, NH Electrical Contractors Business Assoc., licensed master electrician  
John Tuttle, NH Home Builders Association, Architectural designer - residential  
Mike Santa, CBO, Governor's Commission on Disability, Architectural barrier/free design

### **Excused:**

Laura A. Black, PE - Board of Engineers, licensed electrical engineer  
Fred Baybutt, Associated General Contractors, building contractor - non-residential bldgs.

### **Absent:**

Joel Fisher, Board of Engineers, licensed structural engineer  
Tedd Evans, Board for Licensing and Regulation of Plumbers, licensed master plumber  
Thomas Malley, Bureau of Electrical Safety and Licensing, licensed master electrician  
VACANT, NH Association of Fire Chiefs, municipal volunteer fire chief  
VACANT, NH Municipal Association  
VACANT, NH Plumbing & Mechanical Contractors Assoc., mechanical contractor, business

### **Guest:**

Marta Modigliani, Legal Counsel, Office of the Commissioner Dept of Safety  
Friedrich Moeckel, Legal Counsel, Tarbell & Brodich for Vinewood Development Company

Chair Clegg declared the continued hearing open with a quorum of Board members present.

FIRST PORTION OF TAPE - ERROR WAS MADE - NO RECORDING.

Chairman Clegg recognized Marta Modigliani, Attorney for the State Fire Marshal's office. Marta asked for clarification for the Board members and guests attending - when you say the fire chief in 2005 - who was the Fire Chief in 2005.

The response was answered that it was Pouliot.

And prior to being contacted by Chief Pouliot - the original October 11<sup>th</sup> letter - had you contacted Chief Pouliot. The response was his recollection was they had met at the job site - just prior to that.

John Tuttle asked if there was a record, a recording, statement of that previous meeting. It was responded to with a statement that the previous fire chief was at the initial meeting only, when they did the conceptual meeting and they did their application. For whatever reason, the Fire Department was not represented.

Attorney Modigliani addressed the Board. Tom Mullin gave a brief history of his involvement in the Town of Webster. He stated he has been on the planning board for 4-5 years now. He has served as the representative to the incinerator committee and the dump committee. He became aware of this case when it came before the planning board for a sub-division. Tom reviewed the minutes from the Town meeting in November 17, 2005. He recalled that this meeting is where the former Fire Chief, Shawn Mitchell, spoke to the applicant, and gave him a choice of having either a cistern fire pond or a sprinkler system, and that these would be required. Mr. Marcello expressed his preference for sprinklers. The Planning Board regarded this as a State issue and not a local, much in the same way as the flood plains. The compliance is not a specific condition, contractors have to comply with all the State and Federal regulations. The town sees no reason to be redundant. The authority for this requirement was the Fire Chief representing the Fire Marshal to enforce the building codes. This requirement to comply with State and Federal has been in force for years. Mr. Mullin identified State's Exhibit "C" - page 29 as the town's building permit application which is given out by the town's secretary as a packet with these as well as other forms.

Attorney Moeckel asked Mr. Mullin if he remembered at the November 17, 2005 meeting, what it was Vinewood was doing. Mr. Mullin responded that this was part of their subdivision application their lot where Blackberry Lane now is - which was in 7 lots. Mr. Mullin also stated he was not the town's building inspector, and that there was no one for the town - but that there was a zoning ordinance compliance officer. He was at the January 2006, planning board meeting where they approved Vinewood's subdivision. There was dialogue between Vinewood and the Planning Board where the Board went through certain proposed Conditions of Approval. Mr. Mullin stated that the Planning Board talked about the Proposed Conditions of Approval. Mr. Mullin recalled that item #14 got 'struck' and the reason why it was 'struck' was because this was not a town issue - that this had already been established and they were being redundant. It was an issue between the State, as represented by the Fire Chief and the applicant, and that it was a 'done deal'.

Chairman Clegg interjected that any problems Vinewood has with the Town, needs to be addressed outside of this Board. This Board can not get involved in a dispute between a builder and the actual Town. This Board can only discuss whether or not the Fire Marshal and his Rules and Regulations, are proper or not proper as they pertain to this.

Building Permit Application - State's Exhibit "C": Petitioner's "7" Mr. Mullin stated was added to the packet, after he had built his own mother's house 5 years ago. What it is is a double check for the Town on the septic systems being installed. Mr. Mullin was asked to look at State's 8, 9 and 10 - Building Permits as testified by Mr. Marcello. He stated it looks like it was regenerated after the ordinance was passed about impact fees.

Jerry Tepe asked Mr. Mullin as a member of the Planning Board, asked if this requirement of sprinklers in single-family developments come up? Mr. Mullin responded that there has not been another development since.

Fire Chief Adam Pouliot, Fire Chief in the Town of Webster told the Board he has been on with the town for about 4-5 years, and has worked himself up to the current position as Fire Chief. Chief Mitchell told him that Vinewood would have to comply with Fire Codes NFPA 1141 and 1142 (the Codes that deal with water supplies and fire fighting in rural conditions) and told him that he should thumb through them. The Chief told him that Vinewood has agreed to put in sprinklers rather than the cisterns or fire ponds. State's Exhibit "D" was a follow-up letter to Mr. Marcello, after their conversation down at the construction site (within a week of the meeting this letter was sent). As a result of a telephone message he received, Chief Pouliot sent a letter to Mr. Marcello, State's Exhibit "E", responding to his question as to why he was required to do the Codes . . . he felt that he was being highlighted in the community and that nobody else was required to do it. The next communication he has with Vinewood (Marcello) was a letter through his attorney. At this point, he spoke with Mike Stark from the Fire Marshal's office. Vinewood was never denied any building permits. Chief Pouliot did not issue a Cease and Desist order. The Town never received a request for an exception or variance from Vinewood.

Attorney Moeckel asked Chief Pouliot if 3 - 4 years ago the Chief was Mitchell. He answered yes. He then asked if the Chief had attended any of the planning board meetings on the Vinewood Blackberry Lane development. He answered no. All the knowledge he has was given to him through Chief Mitchell. Attorney Moeckel asked if in any of the correspondence between Vinewood and the Fire Department - the particular editions of the Codes used were listed. Chief Pouliot answered not that he was aware of.

Chairman Clegg asked the Chief if the Town of Webster has an adopted Fire Code. The Chief answered no. He then asked if he acts as the State Fire Marshal's designee for the Town as the Fire Chief. And the Fire Marshal has designated you to be his designee. Chief Pouliot answered that the assumes it comes with the role of Fire Chief.

Mark Weissflog asked the Chief said that at the beginning of every Appendix - there was wording in italics - it says "Appendix A is not part of the requirements of this NFPA document - but is included for informational purposes only". What does that statement mean to you? The Chief answered that they are not part of the Code - and are NOT enforceable. It was asked if the town had adopted any Codes that were stricter - and the Chief answered no - they follow the State Fire Code.

William Degnan, NH State Fire Marshal, was introduced and sworn in. He has been with the Dept of Safety for 20 years all of which were served in the fire services industry. Under the authority of RSA 153:4-A, he has the authority to advise local officials and render opinions. By adopting NFPA 1 - all of other Codes and other items referenced in Chapter 2 of NFPA 1 are automatically adopted by reference in the Code. There are certain things that are put into the Administrative Rules to make things clearer. There are amendments made to some of those that is why they are expressly adopted there.

The Chair asked under RSA 155 any community that doesn't have a local building official, building inspector, the legislature designated the State Fire Marshal's office as the ex-officio building inspector. The legislation also allowed the State FMO to use a designee and that the Fire Chief in the local community could be the designee. Is Chief Pouliot your designee in the Town of Webster? The Fire Marshal answered that he did not have that authority to grant that in the Town of Webster because in that Town, the Board of Selectmen in their own ordinances state that they are the building code official. By State Statute he is acting as the FMO's designee.

Attorney Moeckel asked the Fire Marshal if in the Administrative Rules - it mentioned the NFPA Codes - and if so - how could the public get access to the Codes? Or if they were on line. The Fire Marshal stated that the public can access any of the Codes at the local building code enforcement office in the town where they live, and they are also at every fire department and the state library - or they can purchase them on-line. Attorney Moeckel asked a question on the adequacy of water - how far away does a water source need to be in order to be adequate? The FMO answered that he could not answer that without seeing the water source. There is more to it than just distance - there is supply - the access - the fire departments capabilities . . . all that comes into play.

Attorney Modigliani moved for a MOTION TO DISMISS for failure to state a cause of action. She asked that her pleadings be entered as well - everything came in with regards to their exhibits without any objections - so they will rest on those.

Attorney Moeckel asked the Board to make a decision on the subject matter of jurisdiction issue prior to making any other decision.

The Chair called for a 2 minute recess.

The Chair called the meeting back to order. First order of business is the MOTION TO DISMISS.

Discussion: John Tuttle spoke that Vinewood did not show apply for a variance to the State, which should have been the next step. Wayne Richardson agreed with John. There is a specific set of criteria outlined in the Rules to apply for a variance or an exception - if the Rules and Procedures are not followed exactly, this Board will be wrapped up in a lot of Code interpretations and applications which not what this Board was designed for. Jerry Tepe agreed with John and Wayne - however in Vinewood's 4/30<sup>th</sup> letter (States Exhibit I) to the State Fire Marshal - where it states please accept this correspondence . . . . he thought could be interpreted as a request for a variance or exception. He also had a concern where it was stated 'decisions' of the State Fire Marshal rather than 'exceptions' or 'variances' to it. Jon Osgood read RSA 155-A:11 and in his opinion this was a 'decision' the Fire Marshal made that 1141 and 1142 are part of the Code - and this Board does have jurisdiction to help decide that issue.

Chairman Clegg said that he will do a roll call and ask for a YES to dismiss or a NO to deny.

Robert Clegg, Chairman	NO
Jerry Tepe	NO
Wayne A. Richardson	YES
Jon Osgood	NO
Thomas Lambert	YES
James Petersen	YES

Mark Weissflog	YES
John Tuttle	YES
Mike Santa	YES

The MOTION TO DISMISS passed.

Chairman Clegg declared this meeting adjourned.